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ACCESSING EFFECTIVE COMMUNICATION

Individuals with disabilities are entitled, as a matter of law and social justice, to fair and equal opportunities in all aspects of their daily lives. For all individuals who are deaf, hard of hearing, or have a speech impairment, communication must be effective to achieve full and equal accessibility to goods and services.

The following information is provided to facilitate communication access and ensure compliance with state and federal law.

Questions and Answers

Q: What is the obligation of health care providers under the Americans with Disabilities Act (ADA) for individuals who are deaf, hard of hearing, or have a speech impairment?

A: Health care providers have a duty to provide auxiliary aids and services that ensure that communication with people who have speech impairments or who are deaf or hard of hearing is as effective as communication with others.

Q: For whom must a health care provider offer effective communications?

A: A health care provider must ensure that effective communication is available to customers, clients, and other individuals who are deaf, hard of hearing, or have a speech impairment and who are seeking or receiving services. Such individuals may not always be "patients" of the health care provider. For example, a deaf parent of a hearing child may require an auxiliary aid or service to give informed consent for the child's treatment.

Q: What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals who are deaf, hard of hearing, or have a speech impairment?

A: Appropriate auxiliary aids and services are required by the ADA to ensure effective communication. According to the federal rules, appropriate auxiliary aids and services may include, but are not limited to: qualified interpreters (manual or oral), assistive listening devices, notetakers, written materials, telephone handset amplifiers, telephones compatible with hearing aids, videotext real time captioning devices, television decoders, and teletype machines (TTYs).

Q: How does a health care provider determine which auxiliary aid or service is required?

A: The auxiliary aid requirement is flexible. There are many types of auxiliary aids and services available. The intent of the law is to encourage discussion between the health care provider and the person with a disability to arrive at an agreement as to what type of auxiliary aid will result in effective communication. Several factors should be discussed, such as the complexity of the communication, the urgency of the communication, and reasonable advance notification of the need for communication assistance by the individual with the disability. A choice can then be made by the provider among the various alternatives as long as the result is effective communication for all parties involved. The United States Department of Justice, which is charged with enforcement of Title III of the ADA, expects that

the health care provider will, when possible, consult with the individual with the disability and consider carefully the self-assessment of the individual with the communication need before providing a particular aid or service.

Q: Are there any limitations on the ADA's auxiliary aids and services requirements?

A: Yes, the ADA does not require the provision of any auxiliary aid or service that would result in an “undue burden” or in a “fundamental alteration” in the nature of the goods or services provided by a health care provider.

Q: In what medical situations should a health care provider obtain the services of a sign language interpreter?

A: A sign language interpreter should be provided in all situations in which the information exchanged is sufficiently lengthy or complex and other auxiliary aids do not provide effective communication.

Q: Must health care providers make conferences, health education, and training sessions that are open to the general public accessible to individuals who are deaf, hard of hearing, or have speech impairment if such a request is made?

A: Yes, health care providers who offer training sessions, health education, or conferences to the general public must make these events accessible to individuals who are deaf, hard of hearing, or have a speech impairment upon request. In addition to interpreters, there are a variety of assistive listening devices that may be appropriate to eliminate problems with distance and background noise for individuals who are deaf or hard of hearing who wish to attend these sessions.

Q: Can health care providers receive any tax credits for the costs of providing auxiliary aids and services?

A: Yes, businesses, including health care providers, may claim a tax credit of up to 50 percent of eligible access expenditures that are over \$250, but less than \$10,250. The amount credited may be up to \$5,000 per tax year. Eligible access expenditures include the costs of providing interpreters, purchasing TTY's, and providing other auxiliary aids and services.

Q: Who is a “qualified interpreter”?

A: A qualified interpreter is an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. In the medical setting, this will mean that the interpreter may need to interpret complex medical terminology. A member of the health care provider's staff may know some sign language and may understand complex medical terminology, but often is not qualified to interpret effectively or accurately, either receptively or expressively.

Q: Can a health care provider require family members or friends to interpret for patients who are deaf or hard of hearing?

A: Using family members or friends is generally not recommended. Family members may not possess sufficient sign language skills to effectively interpret in a medical setting. Even if they are skilled enough in the particular sign language required by the individual, family members and friends may be too emotionally or personally involved to interpret "effectively, accurately, and impartially." In addition, problems with patient confidentiality may occur when family members and friends are asked to act as interpreters. A rare exception to this rule might be a parent interpreting for his/her preschool age child.

Q: Are sign language interpreters licensed in Illinois?

A: No, but some sign language interpreters are certified by the Registry of Interpreters for the Deaf, a national, professional organization for interpreters.

Q: Is it the patient's responsibility to ask for effective communication?

A: Yes. Whenever possible, an individual with a disability should give advance notification of his/her need and preference for an auxiliary aid or service.

Q: Can a health care provider charge a patient who is deaf, hard of hearing, or has a speech impairment for part or all of the costs of providing an auxiliary aid or service?

A: No. A health care provider cannot charge a patient for the costs of providing auxiliary aids and services either directly or through the patient's insurance carrier.

Q: Who must pay for an auxiliary aid or service if the cost of that aid or service exceeds the provider's charge for the appointment?

A: A health care provider is expected to treat the costs of providing auxiliary aids and services as part of the overhead costs of operating a business. Therefore, as long as the provision of the auxiliary aid or service does not impose an undue burden on the provider's business and does not fundamentally alter the provider's services, the provider is obligated to pay for the auxiliary aid or service.

Q: Do written notes offer an effective means of communicating with individuals who are deaf or hard of hearing?

A: This depends on the reading level of the individual. Additionally, written communications in the health care setting may be difficult. For many individuals who are deaf or hard of hearing, the services of a sign language interpreter offer the only effective method of communication.

Q: When does a health care provider need to provide accessible telephone services to individuals who are deaf, hard of hearing, or have a speech impairment?

A: Health care providers who routinely provide telephone services must make these services available to individuals who are deaf, hard of hearing, or have a speech impairment. A TTY is used by many individuals who are deaf, hard of hearing, or have a speech impairment to send and receive written messages over the telephone lines. In many instances, health care providers can receive incoming calls for TTY users through relay services. Title IV of the ADA requires telephone companies to provide relay services across the nation by July 26, 1993.

Q: Who is considered an individual with a disability under Title III of the ADA?

A: An "individual with a disability" is defined as someone who: (a) has a physical or mental impairment that substantially limits one or more major life activities; or (b) has a record of such impairment; or (c) is regarded or perceived as having such an impairment (even if the individual does not actually have the impairment.)

Helpful Rules

- Obtain the person's attention before you begin to speak;
- Focus directly at the person and speak naturally;
- Do not raise your voice or become louder and louder;
- Do not cover your mouth with objects or your hands;
- Have good room lighting when you are speaking, if possible;
- Ask the person how you can best accommodate his/her particular communication mode;
- Keep written notes short;
- If you are asked to repeat a sentence, try to use other words and phrases to express the same ideas;
- Use facial or gestural communication (body language) as much as possible.

State Law

Under the provisions contained in the Illinois Statutes, Illinois Compiled Statutes, 15 ILCS #210/1, the Office of the Attorney General is charged with the responsibility to “investigate all violations of the laws relating to civil rights and the prevention of discrimination against persons by reason of ... physical or mental handicap ... and shall undertake necessary enforcement measures.”

The Illinois Human Rights Act, Illinois Compiled Statutes, 775 ILCS 5/1-101, provides for full and equal access to goods and services for individuals with disabilities.

The Telecommunication Relay Service (TRS), Illinois Statutes, Illinois Compiled Statutes, 220 ILCS 5/13-703(b), was established in June of 1990. Telephone relay services enable individuals and businesses without TDD/TTY's to communicate with persons with speech impairments and/or those who are deaf or hard of hearing. The person with the TDD/TTY calls the relay operator and communicates his/her message; the relay operator calls and communicates via voice transmission to the other person. The relay operator then types the response.

Federal Law

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against people who are deaf or hard of hearing in places of public accommodation. Included within the definition of places of public accommodation are “any professional offices of health care providers,” regardless of the size of the office or the number of employees. 28 C.F.R. Sec. 36.104.

Title II of the Americans with Disabilities Act (ADA) covers state and local units of government such as a county clinic or hospital. It requires “Public entities” to furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration in the service would result.

Section 504 of the Rehabilitation Act of 1973 states that: “No otherwise qualified individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

All recipients of federal funds, including any employer who receives federal funds are affected by Section 504 of the Rehabilitation Act of 1973.

Acknowledgments

The Disability Rights Bureau of the Attorney General's office in cooperation with the Health Committee members of the Advisory Council, has prepared this handout to help all Citizens of Illinois achieve full communication access in obtaining health care services.

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